

**Bureau of Land Management  
Winnemucca District Office  
HRFO (W010)**

**Categorical Exclusion**

**CX#: DOI-BLM-NV-W010-2012-0043-CX**

**Date: 6/27/2012**

Lease / Case File / Serial #: N/A

Regulatory Authority (CFR or Law): 43 CFR 3809/3830, 30 USC 1202

BLM Manual: 3720

Subject Function Code: 43 CFR 3809/3830, 30 USC 1202

Is the project located within a Preliminary Priority Habitat? ☐Yes ☒No

Is the project located within a Preliminary General Priority Habitat? ☐Yes ☒No

Is the project located within a National Landscape Conservation System feature (NCA, Wilderness, WSA, ISA, Scenic or Historic Trails)? ☐Yes ☒No

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1. BLM District Office: Winnemucca District Office

2. Name of Project Lead: Daniel Atkinson/John Callan

3. Project Title: Shively Strike Abandoned Mine Lands Permanent Closure Project

4. Applicant: BLM/Nevada Division of Minerals

5. Project Description: (briefly describe who, what, when, where, why, how)

The Shively Strike is a series of known physical hazards (approximately 6 shafts) that are the result of historic mining activity on Winnemucca Mountain. This project proposes to permanently close the shafts to provide public safety. The project area has been surveyed for cultural resources and sensitive bat species habitat. No cultural resources that would be eligible for listing on the National Register of Historic Places were identified, and no bats have been seen using the area as habitat. Therefore, the permanent closure method would likely be to backfill the hazards with material found on site. The closure work would be funded and completed through the Nevada Division of Minerals, and closure work would begin immediately upon BLM approval.

Project dimensions (length, width, height, depth): Approximately 500 ft. long and 150 ft. wide.

Total Acres: Could be up to 2 acres of surface disturbance, depending on availability of backfill material.

BLM Acres: Up to 2 acres.

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Will the project result in new surface disturbance? ☒Yes ☐No

Has the project area been previously disturbed? ☒Yes ☐No ☐N/A

If yes, what percent of the project area has been disturbed? 95% . If only part of the project area has been disturbed, indicate disturbed area on map. Describe disturbance (and attach photo of disturbed area if you have one): Historic shafts and associated waste rock dumps. Very little new disturbance would be created. See attached aerial photo.

6. Legal Description: T36N, R37E, section 1, NWNESE

USGS 24k Quad name: Winnemucca Mountain

100k map name: Osgood Mountains

Land Status: ☒ BLM ☐Private ☐Other\_\_\_\_\_.

**Part I: Plan Conformance Review**

The Proposed Action is subject to the:

- ☒ Paradise-Denio Management Framework Plan
- ☐ Sonoma-Gerlach Management Framework Plan
- ☐ Black Rock Desert-High Rock Canyon Emigrant Trails NCA and Associated Wilderness and Other Contiguous Lands in Nevada RMP

The proposed action is in conformance with the LUP, even though it is not specifically provided for, because it is clearly consistent with the following LUP decision(s) (objectives, terms, and conditions):

Objective M-2 states: Eliminate hazards connected with past mining activity.

**Part II: NEPA Review**

Categorical Exclusion Review: This Proposed Action qualifies as a categorical exclusion under:

- ☐ 43 CFR 46.210 DOI Implementation of NEPA of 1969, Listing of Departmental Categorical Exclusions (*formerly 516 DM2 Appendix 1*)
- ☒ 516 DM 11.9, (BLM) J.8 - Installation of minor devices to protect human life (e.g., grates across mines).

**ESA and BLM Sensitive Status Species**

<b>Evaluation Criteria</b>	<b>Yes</b>	<b>No</b>
1. Are species listed under the Endangered Species Act likely to occur in the project area? If yes, list the species in Table 1 below. Verify with USFWS or use approved list.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Are BLM NV Sensitive Species, based upon the current IM, likely to occur in the project area? If yes, list the species in the Table 1 below.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Could the proposed action result in “take” under the Migratory Bird Treaty Act? If yes, attach appropriate mitigation measures.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Table 1. Special Status Species that may occur in the project area:**

<b>ESA</b>	<b>BLM</b>	<b>Common (Scientific) Name</b>	<b>May Be Affected?</b>	<b>Mitigation for BLM Sensitive Species (Attach ESA Section 7 Compliance to Form)</b>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Loggerhead Shrike ( <i>Lanius ludovicianus</i> ) and Brewer’s Sparrow ( <i>Spizella breweri</i> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	For any disturbance or material removed from areas with intact vegetation: In order to avoid potential impacts to breeding migratory birds, a careful visual inspection of habitat in the project area should be made prior to any surface disturbance (including cross-country routes) during the avian breeding season (March 1 <sup>st</sup> through August 31 <sup>st</sup> ). Nesting activities may include eggs or young present in nest, adult behavioral displays (e.g. dive-bombing, faking injury, won’t leave the area, agitated calling, etc.). If active nests are located, the BLM biologist must be notified immediately and appropriate protection measures which may include avoidance or restriction of activities will be established.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Western Burrowing Owl ( <i>Athene cunicularia hypugaea</i> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Same as Loggerhead Shrike.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Bats ( <i>spp.</i> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Bat surveys have been completed and no bats were detected. If the closure is delayed and does not occur immediately, follow recommendations to conduct an additional night survey the evening immediately prior to closure.

**Table 2 Migratory Bird Treaty Act Consideration**

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Potential MBTA Species w/in the Project Area Common ( <i>Scientific</i> ) Name	May Be Affected?	Recommended Mitigation
Black-Throated Sparrow ( <i>Amphispiza bilineata</i> )	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Same as Loggerhead Shrike.
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	

*Mitigation Measures/Remarks:* None.

The Proposed Action has been reviewed to determine if any exceptions described in 43 CFR 46.215 Categorical Exclusions: Extraordinary Circumstances apply. (See attached page)

### **Part III: DECISION:**

I have reviewed this plan conformance and NEPA compliance record and have determined that the proposed project is in conformance with the approved land use plan and that no other environmental analysis is required.

☐ Project authorization is subject to mitigation measures identified above. (This is a NEPA Decision. A separate program implementation decision is necessary.)

☒ Based on 30 USC 1202, FLPMA, and BLM Manual 3720, it is my decision to allow for implementation of the project, as described, with the mitigation measures identified above and attached as stipulations, conditions of approval, terms of conditions, etc. This is a combined NEPA and program implementation decision.

30 USC 1202(h) states, *It is the purpose of this chapter to ... promote the reclamation of mined areas left without adequate reclamation prior to August 3, 1977, and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public.*

Authorized Official: \S\ Michael Truden Date: 6/28/2012  
(Signature)

#### **Administrative Review or Appeal Opportunities**

A person who wishes to appeal to the Interior Board of Land Appeals must do so under 43 CFR 4.411 and must file in the office of the officer who made the decision (not the board), in writing to Michael Truden, Humboldt River Field Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445. A person served with the decision being appealed must transmit the notice of appeal in time to be filed in the office where it is required to be filed within thirty (30) days after the date of service.

The notice of appeal must give the serial number or other identification of the case and may include a statement of reasons for the appeal, a statement of standing if required by § 4.412(b), and any arguments the appellant wishes to make. Form 1842-1 provides additional information regarding filing an appeal.

No extension of time will be granted for filing a notice of appeal. If a notice of appeal is filed after the grace period provided in §4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the appeal is filed during the grace period provided in §4.401(a) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the appeal will be dismissed by the Board.

The appellant shall serve a copy of the notice of appeal and any statements of reason, written arguments, or briefs under §4.413 on each adverse party named in the decision from which the appeal is taken and on the Office of the Solicitor, Pacific Southwest Regional Solicitor, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, California 95825-1890. Service must be accompanied by personally serving a copy to the party or by sending the

document by registered or certified mail, return receipt requested, to the address of record in the bureau, no later than 15 days after filing the document.

In addition, within thirty (30) days of receipt of this decision you have the right to file a petition for a stay together with your appeal in accordance with the regulations at 43 CFR 4.21. The petition must be served upon the same parties specified above.

Pursuant to 43 CFR 4.471(c), a petition for stay, if filed, must show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and,
- (4) Whether the public interest favors granting the stay.

43 CFR 4.471 (d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.422(c)(2)).